

REMARKS

Upon entry of the present Amendment, claims 1, 2, 4-6, 8 and 9 will have been amended without narrowing the scope thereof and not in view of the prior art. In particular, the above-noted claims will have been amended to clarify the language thereof and to eliminate minor typographic informalities. Accordingly, no estoppel should attach to these changes.

Initially, Applicant respectfully thanks the Examiner for acknowledging the Claim for Foreign Priority under 35 U.S.C. § 119 and for confirming receipt of the certified copy of the foreign priority document in the present application.

Applicant further notes the filing of an Information Disclosure Statement on May 2, 2001 and assumes that the Examiner has considered the disclosures of each of the co-pending U.S. applications cited therein. In particular, Applicant notes that the Examiner has utilized one of the cited applications as the basis for the non-statutory double patenting rejection set forth in the outstanding Official Action. Nevertheless, Applicant respectfully requests explicit confirmation that the Examiner has considered both of the pending applications cited in the above-noted Information Disclosure Statement.

In the outstanding Official Action, the Examiner provisionally rejected claims 1 and 9 under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1 and 9 of co-pending U.S. Application No. 09/773,584.

In this regard, Applicant notes that in the body of the rejection, as well as on the Cover Sheet for the Official Action, the Examiner appears to have been rejecting claims 1-9 yet in the first sentence of the rejection, the Examiner only rejected claims 1 and 9.

For the purposes of this Amendment, Applicant is assuming that all of claims 1-9 have been rejected.

In setting out the rejection, the Examiner noted that the conflicting claims are not identical but nevertheless concluded they are not patentably distinct from each other because the claim limitations are similar to the claim limitations of the co-pending Application except for the limitation in the last paragraph of claims 1 and 9. The Examiner asserted that these differences are "obvious variations" of one another.

Applicant respectfully traverses the above rejection and submits that it is inappropriate. In particular, the Examiner has set forth no evidence for his asserted conclusion of "obvious variations". Applicant respectfully submits that absent such reasoning or evidence, the Examiner cannot reject claims, whether under the judicially created doctrine of obviousness type double patenting or under 35 U.S.C. § 103 itself. Rather, any obviousness rejection requires appropriate evidence of obviousness in support of the conclusion of obviousness.

In addition to the above, Applicant respectfully submits that while claim 1 of the '584 application recites a drive circuit that drives the stepping motor, Applicant's invention as recited in claim 1 requires an image signal reading processor that reads the image signal in synchronization with movement to the transport table. This feature is not recited in claim 1 of the '584 application and is also not an "obvious variation" thereof.

For at least each of the above-noted reasons, it is respectfully submitted that the Examiner's obviousness type double patenting rejection is inappropriate and should be withdrawn.

Nevertheless, and merely in order to expedite the allowance of the claims in the present application, Applicant is submitting an executed Terminal Disclaimer to disclaim the terminal portion of any patent to issue from the present application that would extend beyond the expiration date of any patent to issue from U.S. Patent Application No. 09/773,584 as set forth in the above-noted Terminal Disclaimer.

Again, Applicant notes that the filing of the Terminal Disclaimer is made only in order to expedite the allowance of the present application and is not to be interpreted as an acquiescence in the propriety of the Examiner's obviousness type double patenting rejection. In particular, neither Applicant nor the assignee of the present application in any way acquiesces in the propriety of the asserted double patenting rejection nor is the filing of the Terminal Disclaimer to be interpreted as such an acquiescence.

In view of the above-noted reasons as well as the concurrently filed Terminal Disclaimer, Applicant respectfully submits that the Examiner's provisional judicially created doctrine of obviousness type double patenting rejection has been rendered moot. Accordingly, an indication of the allowability of all the claims pending in the present application is respectfully requested in due course.

SUMMARY AND CONCLUSION

Applicant has made a sincere effort to place the present application in condition for allowance and believes that he has now done so. Applicant has amended the claims to eliminate typographic and grammatical errors therefrom without narrowing the scope thereof. Applicant has further discussed the Examiner's rejection and has pointed out the shortcomings thereof with respect to the recited features of Applicant's claims. Moreover, Applicant has submitted a Terminal Disclaimer to overcome the Examiner's asserted rejection without acquiescing in the propriety of the Examiner's rejection.

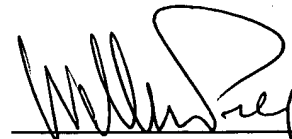
Accordingly, Applicant has provided a clear evidentiary basis supporting the patentability of all the claims in the present application and respectfully requests an indication to such effect in due course.

The amendments to the claims which have been made in this amendment, which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

P20274.A03

Should the Examiner have any questions or comments regarding this Response, or the present application, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,  
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*Handwritten note: R No 33630*

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